

1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(1)(1) and § 706.02(1)(2).

See entire document. Govoni, et al. disclose applicant's prepolymerized catalyst component (US 5641721 incorporated by reference - discloses a method for preparing a prepolymerized catalyst) comprising titanium (TiCl_4 , TiCl_3 - col. 2, l. 35-39), magnesium halide (col. 2, l. 23-24), internal electron donor (col. 2, l. 40 - col. 3, l. 6), halogenating hydrocarbons (col. 3, l. 19-21), wherein a BET surface area of between 20-500 m^2/g and BET porosity of 0.2-0.6 cm^3/g and porosity Hg method of 0.3-1.5 cm^3/g (col. 3, l. 66 - col. 4, l. 7), aluminum alkyl compound (trialkyl aluminum, triisobutylaluminum, tri-n-butylaluminum, triethylaluminum, tri-n-hexylaluminum and tri-n-octylaluminum - col. 4, l. 29-40) having an Al/Ti molar ratio from 0.001 to 50 (col. 4, l. 38-40), alcohol content between 0.1-2.5 (col. 3, l. 41-56), ethylene prepolymerization up to 100 g per g of said solid catalyst component (col. 2, l. 15-19) is disclosed (col. 6, l. 57 - col. 7, l. 4) the alpha olefins ($\text{CH}_2=\text{CHR}$, wherein R is hydrogen or a C1-C12 alkyl group - col. 2, l. 6-18 - e.g., propylene) are disclosed. Since the prior art appears to disclose the invention as claimed on the basis of inherent property characteristics which render the claimed product obvious, the burden of proof that it does or does not shifts to the applicant.

RESPONSE

Applicant thanks the Examiner for acknowledging the present application and U.S. Patent 6,468,938 (the '938 patent) are commonly

owned.

Applicant respectfully confirms the subject matter currently claimed in the present application and the subject matter contained in the '938 patent are commonly owned. Additionally, Applicant was subject to an obligation of assignment to the owner of the '938 patent at the time the claimed subject matter was made. Applicant has included herein as Attachment A (i) a copy of the Recordation of Assignment for the currently pending application, and (ii) a copy of the assignee of record for the '938 patent from the U.S. Assignment database. Accordingly, Applicant respectfully contends the '938 patent is not prior art under 35 U.S.C. 103(a) in lieu of 35 U.S.C. 103(c).

In light of the above, claims 1-20 are therefore asserted to be patentable over Govoni, et al. As such, allowance of the claims is earnestly requested.

2. Rejection of Claims 2 and 3 Under 35 U.S.C. §103(a)

The Office Action states claims 2 and 3 are rejected as being unpatentable over Govoni, et al. (U.S. Patent 6,468,938) in view of Funabashi, et al. (U.S. Patent 5,556,820). In particular, the Office Action states,

Govoni, et al. disclose a prepolymerized catalyst and method of making said catalyst as well as a process for the (co)polymerization of ethylene supra. Govoni, et al. fail to specifically disclose the amount of alpha olefin polymer less than 15 g per g solid catalyst component, specifically from 0.8-4 g per g of solid catalyst component. Funabashi, et al. cures the deficiency of Govoni, et al. by disclosing

contacting between 1 and 500 grams of alpha olefin per 1 gram of the catalyst because it improves the catalyst to decrease micro-powder formation. The claims differ in that Funabashi, et al. does not teach the lower ranges as specific embodiments of the larger range as recited in the instant claims.

However, one of ordinary skill in the art at the time the invention was made would have considered the invention to have been obvious because the compositional proportions taught by Funabashi, et al. overlap the instantly claimed proportions and therefore are considered to establish a prima facie case of obviousness. It would have been obvious to one of ordinary skill in the art to select any portions of the disclosed ranges including the instantly claimed ranges from the ranges disclosed in the prior art reference, particularly in view of the fact that; "The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages", In re Peterson 65 USPQ 2d 1379 (CAFC 2003).

RESPONSE

Applicant thanks the Examiner for acknowledging the present application and U.S. Patent 6,468,938 (the '938 patent) are commonly owned.

Applicant respectfully confirms the subject matter currently claimed in the present application and the subject matter contained in the '938 patent are commonly owned. Additionally, Applicant was subject to an obligation of assignment to the owner of the '938 patent at the time the claimed subject matter was made. Applicant has included herein as Attachment A (i) a copy of the Recordation of Assignment for the currently pending application, and (ii) a copy of the assignee of record for the '938 patent from the U.S. Assignment database. Accordingly, Applicant respectfully contends the '938

patent is not prior art under 35 U.S.C. 103(a) in lieu of 35 U.S.C. 103(c).

In light of the above, claims 1-20 are therefore asserted to be patentable over Govoni, et al. As such, allowance of the claims is earnestly requested.

3. Rejection of Claims 1, 4, 7, 8, 14-16, and 19 for Double Patenting

The Office Action states claims 1, 4, 7, 8, 14-16, and 19 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2, 4-5, 7-11, 13, 18-20, and 23 of U.S. Patent 6,399,533. In particular, the Office Action states,

Although the conflicting claims are not identical, they are not patentably distinct from each other because the prepolymerized catalyst component are made of the same composition, where overlapping molar ratio ranges between transition metal and aluminum occur, where overlapping ranges for the surface area and pore diameter also occur. It would have been obvious to one of ordinary skill in the art that the organic supports are identical or very similar and the catalyst composition requires titanium, aluminum and a halogen, which are described previously in the patent for olefin polymerization, therefore the claimed process and the patented process are obvious variants of one another.

RESPONSE

Applicant has submitted a Terminal Disclaimer herewith to obviate the above rejection.

In light of the above, claims 1-20 are therefore asserted to be

patentable over claims 1-2, 4-5, 7-11, 13, 18-20, and 23 of U.S. Patent 6,399,533. As such, allowance of the claims is earnestly requested.

4. Rejection of Claims 1, 4-6, 9-12, and 16 for Double Patenting

The Office Action states claims 1, 4-6, 9-12, and 16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2 of U.S. Patent 6,468,938. In particular, the Office Action states,

Although the conflicting claims are not identical, they are not patentably distinct from each other because the prepolymerized catalyst component are made of the same composition, where titanium and magnesium dichloride compound are disclosed, the specific titanium compound is disclosed, the alpha olefins are disclosed, specifically propylene, and dealcoholating adducts are disclosed, therefore the claimed process and the patented process are obvious variants of one another.

RESPONSE

Applicant has submitted a Terminal Disclaimer herewith to obviate the above rejection.

In light of the above, claims 1-20 are therefore asserted to be patentable over claims 1-2 of U.S. Patent 6,468,938. As such, allowance of the claims is earnestly requested.

CONCLUSION

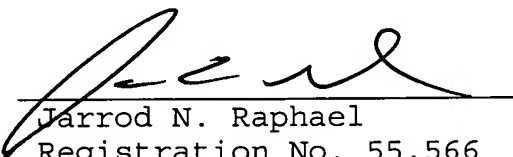
Based upon the above remarks, the presently claimed subject matter is believed to be novel and patentably distinguishable over

Serial No. 10/030,466

the prior art of record. The Examiner is therefore respectfully requested to reconsider and withdraw all rejections and allow all pending claims 1-20. Favorable action with an early allowance of the claims pending in this application is earnestly solicited.

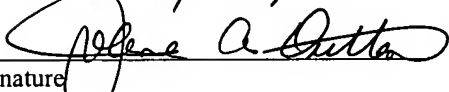
The Examiner is welcomed to telephone the undersigned practitioner if she has any questions or comments.

Respectfully submitted,

By: 
Jarrod N. Raphael
Registration No. 55,566
Customer No. 34872

Date: February 13, 2006
Basell USA Inc.
912 Appleton Road
Elkton, MD 21921
Telephone No.: 410-996-1750
Fax No.: 410-996-1560

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 on February 13, 2006.


Signature

Feb 13 2006
Date



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ATTACHMENT A

AUGUST 23, 2002

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ELKTON, MD 21921

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RECORDATION DATE: 06/27/2002

REEL/FRAME: 013015/0248
NUMBER OF PAGES: 3

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:

BASELL TECHNOLOGY COMPANY BV

DOC DATE: 06/20/2002

ASSIGNEE:

BASELL POLYOLEFINE GMBH
BRUHLER STRASSE 60
D-50389 WESSELING, FED REP GERMANY

SERIAL NUMBER: 09600350
PATENT NUMBER:

FILING DATE: 07/14/2000
ISSUE DATE:

SERIAL NUMBER: 09673048
PATENT NUMBER:

FILING DATE: 12/11/2000
ISSUE DATE:

SERIAL NUMBER: 10068361
PATENT NUMBER:

FILING DATE: 02/06/2002
ISSUE DATE:

SERIAL NUMBER: 09743122
PATENT NUMBER: 6437047

FILING DATE: 01/05/2001
ISSUE DATE: 08/20/2002

SERIAL NUMBER: 09743123
PATENT NUMBER:

FILING DATE: 01/05/2001
ISSUE DATE:

SERIAL NUMBER: 09744542
PATENT NUMBER:

FILING DATE: 03/29/2002
ISSUE DATE:

SERIAL NUMBER: 09762125
PATENT NUMBER:

FILING DATE: 02/02/2001
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SERIAL NUMBER: 09763218
PATENT NUMBER:

FILING DATE: 02/16/2001
ISSUE DATE:

SERIAL NUMBER: 09790314
PATENT NUMBER:

FILING DATE: 02/22/2001
ISSUE DATE:

SERIAL NUMBER: 09831960
PATENT NUMBER:

FILING DATE: 05/16/2001
ISSUE DATE:

SERIAL NUMBER: 09913385
PATENT NUMBER:

FILING DATE: 08/13/2001
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SERIAL NUMBER: 09914304
PATENT NUMBER:

FILING DATE: 08/27/2001
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SERIAL NUMBER: 09914305
PATENT NUMBER:

FILING DATE: 08/27/2001
ISSUE DATE:

SERIAL NUMBER: 09914411
PATENT NUMBER:

FILING DATE: 08/28/2001
ISSUE DATE:

SERIAL NUMBER: 09936832
PATENT NUMBER:

FILING DATE: 09/18/2001
ISSUE DATE:

SERIAL NUMBER: 09979471
PATENT NUMBER:

FILING DATE: 11/20/2001
ISSUE DATE:

SERIAL NUMBER: 10030466
PATENT NUMBER:

FILING DATE:
ISSUE DATE:

SERIAL NUMBER: 10031583
PATENT NUMBER:

FILING DATE: 01/18/2002
ISSUE DATE:

SERIAL NUMBER: 10070120
PATENT NUMBER:

FILING DATE: 02/28/2002
ISSUE DATE:

SERIAL NUMBER: 10088408
PATENT NUMBER:

FILING DATE: 03/19/2002
ISSUE DATE:

ASSIGNMENT COV

06-27-2002



102137394

To the Honorable Commissioner for Patents:

Please record the attached original documents o:

1. Name of conveying party(ies): **Basell Technology Company BV**
Hoeksteen 66
2132 MS Hoofddorp
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2. Name and address of receiving party: **Basell Polyolefine GmbH**
Brühler Strasse 60
D 50389 Wesseling, Germany

06/27/02

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3. Nature of conveyance: **ASSIGNMENT**
Execution Date: **June 20, 2002**

4. Application number(s) or patent number(s):

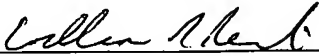
<u>Atty. Docket No.</u>	<u>Serial No.</u>	<u>Filing Date</u>
US 17015	09/600350	07/14/2000
US 17019	09/673048	02/10/2000
US 17019-2	10/068361	02/06/2002
US 18001	09/743122	01/05/2001
US 18002	09/743123	01/05/2001
US 18004	09/744542	01/25/2001
US 18005	09/762125	02/02/2001
US 18007	09/763218	02/16/2001
US 18009	09/790314	02/22/2001
US 18012	09/831960	05/16/2001
US 18021	09/913385	08/13/2001
US 18023	09/914304	08/27/2001
US 18024	09/914305	08/27/2001
US 18025	09/914411	08/28/2001
US 18027	09/936832	09/18/2001
US 18030	09/979471	11/20/2001
US 19001	10/030466	01/08/2002
US 19002	10/031583	01/18/2002
US 19004	10/070120	02/28/2002
US 19005	10/088408	03/19/2002

5. Name and address of party to whom correspondence concerning document should be mailed:

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Basell USA Inc.
Intellectual Property
912 Appleton Road
Elkton, MD 21921

06/28/2002 6TON11 00000053 082336 09600350
01 FC:581 800.00 CH

6. Total number of applications and patents involved: **twenty (20)**
7. Total fee: **\$800.00**
Authorized to be charged to deposit account
8. Deposit account number: **08-2336**
9. To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Signature	<u></u>
	William R. Reid
Date	<u>June 25, 2002</u>

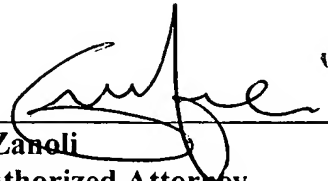
Total number of pages including cover sheet, attachments and document: **3**

ASSIGNMENT

We, **Basell Technology Company BV**, a corporation organized under the laws of The Netherlands, and having its principal office for the transaction of commercial business at Hoeksteen 66, 2132 MS Hoofddorp, in consideration of One Dollar (\$1.00), the receipt and sufficiency of which is hereby acknowledged, do hereby sell and assign to **Basell Polyolefine GmbH**, a corporation organized under the laws of Germany, and having its principal office for the transaction of commercial business at Brühler Strasse 60,D 50389 Wesseling, Germany, all our right, title and interest in the United States of America, including, but not limited to, the right to recover for any past infringement, in and to each of the inventions identified below:

<u>Atty. Docket No.</u>	<u>Serial No.</u>	<u>Filing Date</u>
US 17015	09/600350	07/14/2000
US 17019	09/673048	02/10/2000
US 17019-2	10/068361	02/06/2002
US 18001	09/743122	01/05/2001
US 18002	09/743123	01/05/2001
US 18004	09/744542	01/25/2001
US 18005	09/762125	02/02/2001
US 18007	09/763218	02/16/2001
US 18009	09/790314	02/22/2001
US 18012	09/831960	05/16/2001
US 18021	09/913385	08/13/2001
US 18023	09/914304	08/27/2001
US 18024	09/914305	08/27/2001
US 18025	09/914411	08/28/2001
US 18027	09/936832	09/18/2001
US 18030	09/979471	11/20/2001
US 19001	10/030466	01/08/2002
US 19002	10/031583	01/18/2002
US 19004	10/070120	02/28/2002
US 19005	10/088408	03/19/2002

Signed and dated accordingly below.



Enrico Zanoli
Duly Authorized Attorney

Date

June 20, 2002



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Patent Assignment Abstract of Title

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Total Assignments: 2

Patent #: 6399533

Issue Dt: 06/04/2002

Application #: 08927059

Filing Dt: 09/10/1997

Publication #: US20010023231

Pub Dt: 09/20/2001

Inventors: MARIO SACCHETTI, STEFANO PASQUALI, GABRIELE GOVONI

Title: COMPOUNDS AND CATALYSTS FOR THE POLYMERIZATION OF OLEFINS

Assignment: 1

Reel/Frame: 012547/0598

Recorded: 02/01/2002

Pages: 4

Conveyance: CHANGE OF NAME (SEE DOCUMENT FOR DETAILS).

Assignor: MONTELL TECHNOLOGY COMPANY BV

Exec Dt: 09/22/2000

Assignee: BASELL TECHNOLOGY COMPANY BV

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Correspondent: BRYAN CAVE LLP

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Assignment: 2

Reel/Frame: 017136/0869

Recorded: 02/09/2006

Pages: 2

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

Assignor: BASELL TECHNOLOGY COMPANY BV

Exec Dt: 02/08/2006

Assignee: BASELL POLYOLEFINE GMBH

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Patent Assignment Abstract of Title

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Total Assignments: 3

Patent #: 6468938

Issue Dt: 10/22/2002

Application #: 09273624

Filing Dt: 03/23/1999

Inventors: GABRIELE GOVONI, MARIO SACCHETTI, GIANNI VITALE

Title: PREPOLYMERIZED CATALYST COMPONENTS FOR THE POLYMERIZATION OF OLEFINS

Assignment: 1

Reel/Frame: 009951/0561

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Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

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SACCHETTI, MARIO

Exec Dt: 04/07/1999

VITALE, GIANNI

Exec Dt: 04/07/1999

Assignee: MONTELL TECHNOLOGY COMPANY BV

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Assignment: 2

Reel/Frame: 013246/0708

Recorded: 09/03/2002

Pages: 4

Conveyance: CHANGE OF NAME (SEE DOCUMENT FOR DETAILS).

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Assignment: 3

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Recorded: 02/09/2006

Pages: 2

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

Assignor: BASELL TECHNOLOGY COMPANY BV

Exec Dt: 02/08/2006

Assignee: BASELL POLYOLEFINE GMBH

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